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FORM

(To be used for all correspondence after initial filing.)

Total Number of Pages in This Submission **34**

Application Number	09/872,914
Filing Date	06/01/2001
First Named Inventor	FERDINAND SCHERMEL
Art Unit	3721
Examiner Name	STEPHEN J. COSTELLANO
Attorney Docket Number	

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
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<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		
RCE of 27 pages text 41 page drawings RCE FORM, CREDIT CARD PAYMENT FORM		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	
Signature	
Printed name	FERDINAND SCHERMEL
Date	FEB 21/06
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Signature	
Typed or printed name	FERDINAND SCHERMEL
Date	FEB 21/06

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EB 21 2006

Request for Continued Examination (RCE) Transmittal		Application Number 09/872,914 Filing Date 06/01/2001 First Named Inventor F. SCHERMEL Art Unit 3727 Examiner Name STEPHEN J. O'STELLAMO Attorney Docket Number _____
Address to: Mail Stop RCE Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application. Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to the USPTO) on page 2.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).
 - a. Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
 - i. Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
 - ii. Other _____
 - b. Enclosed
 - i. Amendment/Reply
 - ii. Affidavit(s)/Declaration(s)
 - iii. Information Disclosure Statement (IDS)
 - iv. Other _____
2. **Miscellaneous**

Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for 3 period of _____ months. (Period of suspension shall not exceed 3 months. Fee under 37 CFR 1.17(i) required)

 - a. Other _____
3. **Fees**

The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed. The Director is hereby authorized to charge the following fees, any underpayment of fees, or credit any overpayments, to my Deposit Account No. _____ I have enclosed a duplicate copy of this sheet.

 - a. RCE fee required under 37 CFR 1.17(e)
 - b. Extension of time fee (37 CFR 1.138 and 1.17)
 - c. Other _____
 - d. Check in the amount of \$ _____ enclosed
 - e. Payment by credit card (Form PTO-2038 enclosed)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Signature	<i>Ferdinand Schermel</i>		Date FEB 13/06
Name (Print/Type)	FERDINAND SCHERMEL		Registration No.

CERTIFICATE OF MAILING OR TRANSMISSION

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Signature	<i>Ferdinand Schermel</i>		Date FEB 13/06
Name (Print/Type)	FERDINAND SCHERMEL		Registration No.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number 09/872,914

Appn. Filed 06/01/2001

Applicant Ferdinand Schermel

Title Tilttable Modular Recycle Container System

Examiner Stephen J. Costellano

Art Unit 3727

AMENDMENT G

Feb 18, 2006

Assistant Commissioner for Patents
Washington, D.C. 20231

total no. of pages of text 27

total no. of pages of drawing 4

Sir:

In response to Appeal 2005-2495 date mailed Dec 20/06

The applicant is filing an RCE to the claims and specification to be considered with respect to the appeal.

Summary of Appeal

The results of the appeal is that all rejections were not sustained except for the 35 U.S.C 112 support for the 55 inch base perimeter of the wheeled container, and also the 35 U.S.C.103(a) for the same 55 inch base perimeter. Scaling was considered inappropriate in the 112 rejection and there was a lack of written descriptive support. For the 103 rejection, which stated that "No criticality has been assigned to the 55 inch perimeter dimension" the appeal board stated that "This reasoning is flawed from the outset, however, because the Tiramani system does not involve trash containers. Moreover, it is of no moment that the limitations in question may not be critical. Claims are not legally required to include critical limitations." This limitation was originally added to obviate over the prior art, but is not deemed necessary by the board. The applicant proposes to remove limitation of criticality for the 55 inch base perimeter as well as requests the examiner to reconsider the drawing and claim objections with respect to the ruling by the board of new matter not being added, to place the application in condition for allowance.

General Remarks

The applicant does not possess the finer literary skills to express tone and diplomacy, and would like to sincerely state that it is not intended for any of the following arguments to be condescending or disrespectful in any way.

Drawing Objections The Appeal No.2005-2495 addressed the 35 U.S.C. 112 rejection which is also similar to the examiner's objection to new matter and the proposed drawing correction. The appeal states:

The following passage details the examiner's rationale for this rejection:

The specification as originally filed doesn't contain support for a modular wheeled container system comprising a wheeled container, a first attachable container which rests on top of said wheeled container and a second attachable container which rests on top of said first attachable container as recited in claim 1. Also, the base perimeter greater than 55 inches as recited in claim 1 is not supported by the original specification. This is a new matter rejection [answer, page 4]

Followed by the appeal decision:

This explanation indicates that the rejection is based on an alleged failure of the specification to comply with the written description requirement of 112, 1. The test for compliance with this requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. *In re Kaslow*, 707 F. 2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983). The content of the drawings may also be considered in determining compliance with the written description requirement. *Id.*

With regard to the recitation in appealed claim 1 of the wheeled container, first attachable container and second attachable container, original claims 1 and 2 recited a system comprising a wheeled container to the attachable container, and a plurality of attachable containers stacked and secured on top of the attachable container. This portion of the disclosure as originally filed would reasonably convey to the artisan that the appellant had possession at that time of a system embodying a wheeled container and first and second attachable containers as now recited in claim 1.

The original disclosure, however, lacks any apparent support for the recitation in claim 1 that the base perimeter of the wheeled container is greater than 55 inches. The appellant's contention that this feature is shown in the drawings (see, for example, page 11 in the main brief) is not well taken because it rests on unsupported assertions relating to the "well known" base perimeter of the RUBBERMAID 32 gallon refuse container¹⁰ shown in the drawings and an inappropriate scaling of the wheeled container (presumably wheeled bin 1) relative thereto.

Thus we shall sustain the standing 35 U.S.C. 112, first paragraph, rejection of independent claim 1 and dependant claims 3-6, 9, 10, 22 and 24-26, but only to the extent that it is based on a lack of written descriptive support for the recitation in claim 1 of the 55 inch base perimeter of the wheeled container.

The above is from the appeal pages 6-8.

The Board of Appeals concluded that "**This portion of the disclosure as originally filed would reasonably convey to the artisan that the appellant had possession at that time of a system embodying a wheeled container and first and second attachable containers as now recited in claim 1.**" It logically should follow that the alleged adding of new matter showing the second attachable container in the proposed drawing corrections of fig 1 and added fig 12, is also not new matter. Allowance of the proposed drawing corrections will then overcome the objections that every feature of the invention must be shown in the drawings. The applicant also gives the following arguments:

Under 35 U.S.C. 113 are "The applicant shall furnish a drawing where necessary for the understanding of the subject matter" and in this case not even the original Fig. 1 or the provisional patent drawing or the amended Fig 1 drawings are necessary for someone skilled in the art to understand and reproduce the invention from the written portion of the disclosure, but with the original drawings combined with the written disclosure, the various configurations are obvious and simply duplication and in any way adds new matter or additional features that was not part of the original disclosure.

The original disclosure under Objects and Advantages page 4 of 13, "(k) the wheeled containers will nest in each other and the recycle containers will nest in each other and the wheeled containers will also nest in the recycle containers and **the lower size of recycle containers can partially nest in the upper size of recycle container**, thus being able to form a single pile of any number of sizes of recycle containers with the wheeled containers reducing shipping costs and distributor shelf space even for small quantities." The original disclosure states "**the lower size of recycle containers can partially nest in the upper size of recycle container**" clearly confirms that there are two sizes of recycle container in the one instant, described as lower and upper, along with the wheeled in the original application supporting the amended fig. 1 showing two recycle containers, a lower and an upper. It is also not possible to construe the recycle container on top of the refuse container as the upper recycle container as it a round not square container and is definitely to small to allow the lower recycle bin to partially nest in it. This proof of disclosure in the original application therefore demonstrates that there is no new matter to the application and should be allowed as a drawing amendment.

The applicant had included Fig 12 that complies with 35 USC 112 to be added as an amendment to the drawings to clarify and obviate the claims. The figure shows a wheeled container with an attachable container and a plurality of attachable containers on top of first attachable container. This is clearly supported by the original specification disclosed by the original claims 1 and 2

1. A modular wheeled container system that is tilted from the free standing position for rolling comprising:
 - a) a wheeled container having a means for rolling
 - b) at least one attachable container, and
 - c) a means for securing adjoining said wheeled container to said attachable container.

2. The system of claim 1 further including a plurality of attachable containers stacked and secured on top of said attachable container.

The claim 3 issue of hitching is not shown in this Fig 12 and the details of the hitching should not have any bearing on the allowance. This figure would then make it clear for someone skilled in the art to make and use the invention and clarify that the inventor had possession of the claimed invention. The skilled person would see the original Fig 1 with one attachable container and the Fig 12 of a wheeled container with 3 attachable containers clearly stated in the original claim 2 as a plurality of said attachable containers. The first said attachable container is shown in the original fig 1 and the plurality of said attachable containers are stacked and secured on top of said attachable container, simply as duplication of the attachable container already show on the wheeled container. A person skilled in the art reading only the above description of the specification and the original fig 1 should easily be able to use and reproduce the invention having three or more (plurality) of attachable containers, if they had broadly interpreted at least one as only one and two or more for the plurality of attachable container as shown in fig 12. Some one skilled in the art would know that by removing one of the three attachable containers, that the inventor must have possessed the claimed invention of two attachable containers as well. Some one skilled in the art broadly interpreting the phrase "at least one" to mean one or only one, would then conclude that "at least one" also included 2 attachable containers, and that the inventor at the time the application was filed knew that two attachable containers was part of the invention and was not later discovered when one of the three attachable container was removed, that a new feature of the invention having only that the claimed invention or a rigid entity for comfortable tilting and rolling was still present. The same person skilled in the art would not be able to patent the configuration with 2 attachable containers.

The objection under 37 CFR 1.121(f) "specific arrangement" of the containers is not the invention but obvious duplication and obvious variation of the invention of tilted hitching containers and forming a rigid entity from a wheeled container and at least one attachable container. The new results are ergonomically comfortable tilting and rolling and increased vertical stability by overcoming the lifting weight / volume restriction taught by a one piece 32 gallon container for the heavier than refuse weight to recyclable goods weight. The invention is shown by the original Fig 1 where the wheeled container is made into a rigid entity and the overall container height increased by the securing of at least one attachable container and the tilted hitching and new use for the Ferbrache handles are shown. The original drawings and specification shows every aspect of the invention producing all of the new and unexpected results which are the features of the invention. Arranging the containers to be rolled so that say the refuse container is behind the recycle rigid entity, does not produce any new result or claimed benefit. Hitching at different points does not produce any new result or claimed benefit as it is tilted hitching that is claimed. Having two or three attachable containers does not produce any new result or claimed benefit over the single attachable container. When there is no new result or unclaimed benefit there cannot be new matter. Having ten attachable containers gives the benefit of more diversity and volume, but that is not what is claimed or patentable, and

hence adds no new result or claimed new benefit, and hence no new matter. This complies with 37 CFR 1.121(f). The examiner was asked for a description of the new and unexpected result that is not claimed. The examiner describes the amendment to fig 1 with the words "additional details" as new matter. Applicant asked for a reference or explanation between duplication / variation and additional details / new matter, and how and why the new matter is not claimed by the claim 1 language "at least one attachable container" and how the language does not include two, or a plurality of attachable containers. A reference that would support the broadening of the language to limit the phrase "at least one" to "only one" or "one" in if the application to limit an interpretation of specification as proper. Even if it were proper to limit the "at least one" to "one" the applicant would have support from the original claim 2 language to have a wheeled container with 3 attachable containers since a plurality of attachable containers on top of said wheeled container is claimed. Would it not follow that a "plurality" can then be broadly interpreted as 4 attachable containers, and so such an amendment would not be supported if broad interpretation is proper for limiting specifications? Applicant believes that a wheeled container with 3 attachable containers is directly described by the original specification regardless of "at least one" being interpreted as "one". This being the case, it would not be reasonable to say that three attachable containers as well as one attachable container on top of a wheeled container (original fig 1) is the invention, but however two attachable containers, is not part of the invention. Would the subject matter of two attachable containers not reasonably convey to someone skilled in the relevant art when the inventor had possession of the subject matter of one attachable and three attachable containers on top of a wheeled container? It is understandable that an inventor cannot keep improving his invention during the patent process without a new date for the improvement being recorded as well as for the practical reasons of examination in terms of additional burden, new issues and new searches. The addition of two or three attachable containers adds no new issues or burdens, and was actually discussed extensively in the Evans art, as well as argued by the examiner that Evans 3 container pile was similar to the applicant's 3 container configuration. Applicant is convinced that there is no new matter or patent rule or that the general intent or spirit of the patent law is broken by the amended Fig 1 and that the allowance of the Fig 12 showing a plurality of attached containers on top of the original fig 1 as originally claimed will obviate that there is no new matter. Applicant has amended the drawings with fig 12 addition showing 3 attachable containers on a wheeled container and petitions that this amendment also be allowed.

The objection under 37 CFR 1.83(a), which states that the drawing must show "every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation" As explained above, the invention is the hitching of containers and forming a rigid entity from a wheeled container and at least one attachable container. The new results are ergonomically comfortable tilting and rolling and increased vertical stability by overcoming the lifting weight / volume restriction taught by a one piece 32 gallon container for the heavier than refuse weight to

recyclable goods weight. The invention is shown by the original Fig 1 where the wheeled container is made into a rigid entity and the overall container height increased by the securing of at least one attachable container and the tilted hitching and new use for the Ferbrache handles are shown. The original drawings and specification clearly show every "feature" of the invention producing all of the new and unexpected results. The duplication of a second attachable container does not produce any new result or claimed benefit. Hitching at different points does not produce any new result or claimed benefit as it is tilted hitching that is claimed. Having two or three attachable containers does not produce any new result or claimed benefit over the single attachable container. When there is no new result or unclaimed benefit there cannot be a new feature. For instance, having ten attachable containers gives the benefit of more diversity and volume, but that is not what is claimed or patentable, and hence adds no new result or claimed benefit, and hence no new feature. This complies with 37 CFR 1.83(a). The applicant requested a reference from the Patent Law that defines the term "feature". If no such reference exists, then a description of the new and unexpected result that is not claimed. Applicant has asked for a reference or explanation between duplication / variation and feature. The "however" clause clearly indicates that conventional, not essential features for proper understanding can be added as a label or symbol. The applicant has originally disclosed sufficient detail that someone skilled in the art of container stacking and design would understand that containers stacked can vary in height and quantity, and that the ultimate stack height is determined by stability, weight, accessibility, container strength, etc., These details are not essential to the understanding of the invention and are obvious duplication and variations for someone skilled in the art. The features of the invention are the rigid entity formation and tilted hitching and new use of the Ferbrache handles. The applicant requests a description of the novel feature not shown by the original disclosure and the resulting advantages of the novel feature.

The applicant requested the specific limitations of claims 3-7, 9, 10, 22 and 23 that were not shown in the drawings.

As well, under 37 CFR 1.81 (a) which states "The applicant for a patent is required to furnish a drawing of his or her invention **where necessary** for the understanding of the subject matter sought to be patented". Applicant has furnished many drawings showing the invention. The second attachable container does not need to be shown, nor does a third or fourth attachable container have to be shown for someone skilled or even unskilled in the art to understand the invention since the first attachable container is shown in the original fig 1 drawing and the second attachable container is specifically described to rest on top of the first attachable container which is shown to rest on top of the wheeled container, hence the additional drawing is not necessary.

For the above reasons the applicant requests reconsideration for the drawing objections.

Claim Objections

The Board of Appeals concluded that “**This portion of the disclosure as originally filed would reasonably convey to the artisan that the appellant had possession at that time of a system embodying a wheeled container and first and second attachable containers as now recited in claim 1.**” It logically should follow that the alleged adding of new matter showing the second attachable container in the proposed drawing corrections of fig 1 and added fig 12, is also not new matter. Allowance of the proposed drawing amendment will then overcome the objections that every feature of the invention must be shown in the drawings. The proposed drawing amendment will satisfy the objections that every feature of the invention must be shown in the drawings.

The appeal also clarifies the regarding the 35 U.S.C. 103(a) rejection of claim 1 as being unpatentable over either Tiramani '559 or Tiramani '847, “**the examiner concedes that neither Tiramani reference teaches a system meeting the limitations in independent claim 1 requiring the base perimeter of the wheeled container to be greater than 55 inches and the total volume of the two container rigid entity to be greater than 32 gallons. Nonetheless, the examiner submits that**

[t]rash containers of 32 gallon capacity and 55 inch base perimeter are well known. It would have been obvious by engineering design choice to modify the size of the [Tiramani] container to be 32 gallons in order to make the volume correspond to any quantity desired. No criticality has been assigned to the 32 gallon capacity. It would have been obvious by engineering design choice to modify the base perimeter to be greater than 55 inch to have a base which is large enough in perimeter and area to be stable to be stacked upon without concern of stack toppling. No criticality has been assigned to the 55 inch base perimeter dimension. [answer, pages 5 and 6].

This reasoning is flawed from the outset, however, because the Tiramani system does not involve trash containers. Moreover, it is of no moment that the limitations in question may not be critical. Claims are not legally required to include critical limitations.” (page 11 and 12 of the appeal).

The applicant argues that it is of no consequence, to the Appeal Board’s decision not to sustain the rejection, to remove the limitation “and wherein a base perimeter of the wheeled container is greater than 55 inches” from claim 1 (recited twice) since the decision was based on the reasoning that “**the Tiramani system does not involve trash containers**” and not on the dimensional limitation of the 55 inch base perimeter.

As well the claim does not legally have to include critical dimensions in this case.

The Appeal Board did not comment on the object of the invention, originally disclosed, to have a container system that would not increase the effective lifting weight for a container of greater volume than the 32 gallon container. It was the intent and the invention to achieve this by the two container rigid entity, and was certainly known at the time of filing.

The applicant also gives the following arguments:

Applicant has proposed a drawing amendment showing 2 as well as 3 attachable containers on top of a wheeled container. The original claims read:

1. A modular wheeled container system that is tilted from the free standing position for rolling comprising:

- a) a wheeled container having a means for rolling
- b) at least one attachable container, and
- c) a means for securing adjoining said wheeled container to said attachable container.

2. The system of claim 1 further including a plurality of attachable containers stacked and secured on top of said attachable container.

Applicant's fig. 12 shows the original fig. 1 having one attachable container on top of the wheeled container but now also having a plurality of attachable containers stacked and secured on top of said attachable container, as clearly described and disclosed in the specification by the original claim 2. How would it be possible for someone skilled in the art, that when one of the attachable containers when removed, leaving two attachable containers secured on top of the wheeled container, was not part of the invention and not realized by the inventor? This assertion must then derive the conclusion that the someone skilled would have actually invented a rigid entity having two attachable containers after they remove the top or third attachable container. The applicant includes the above argument, under drawing objections, with respect to the original drawing not showing the second attachable container. The applicant also relies on the written disclosure of the original claim 1 and 2, and the features of the invention fully disclosed by the original drawings to show that two attachable containers are not new matter and part of the original disclosure.

Applicant gives the above explanation under Drawing Objections with regards to the second attachable container. In addition, the securing of an attachable container to the RUBBERMAID refuse container is shown in the original Fig 1 and described in the operation as being similar to the lid, which is well known to many people using the refuse container. The securing of the attachable container would not challenge someone skilled in the art to make and use such an attachable container since it entails molding of walls onto the existing lid edge as shown in Fig 3, or simply adding walls to the existing lid. The dimensions are not critical for the walls, and the dimensions and details that do require any significant understanding are already existing, such as the lid edge to RUBBERMAID refuse container opening. Other shapes are shown in Fig 2-8 and dimensions and tolerances are flexible and basic engineering knowledge especially for some skilled in containers or plastics.

The original disclosure under Objects and Advantages page 4 of 13 states, "(k) the wheeled containers will nest in each other and the recycle containers will nest in each other and the wheeled containers will also nest in the recycle containers and the lower size of recycle containers can partially nest in the upper size of recycle container, thus being able to form a single pile of any number of sizes of recycle containers with the wheeled containers reducing shipping costs and distributor shelf space even for small quantities." The original disclosure reads "the lower size of recycle containers can partially nest in the upper size of recycle container" clearly states that there are two sizes of recycle

container along with a wheeled container in the one application, described as lower and upper. This proves that the applicant had knowledge and possession and disclosure in the original application supporting the amended fig. 1 showing two recycle containers, a lower and an upper. It is also not possible to construe the recycle container on top of the refuse container as the upper recycle container as it is round not square and definitely too small to allow the lower recycle bin to partially nest in it. Therefore an upper and lower recycle bin are the first and second attachable containers are clearly part of the original specification and not new matter.

The applicant has proposed a drawing amendment showing 3 attachable containers on top of a wheeled container. Applicant gives the above explanation as with regards to the second attachable container.

In the original specification a RUBBERMAID 32 gallon refuse container is shown. It is well known that the base perimeter of this container is approximately 50 inches. The applicant's drawing clearly shows the wheeled container significantly larger than the RUBBERMAID refuse container as well as square in shape. Scaling the drawing shows that the base perimeter of the wheeled container relative to the RUBBERMAID 32 gallon refuse container to be 64 inches. The object and advantages clearly outline the new and unexpected result of increased volume without the effective lifting weight being increased as the containers are dumped independently. The limitation "the base perimeter" will have the amendment read "a base perimeter".

Applicant is presently pursuing the amendment and subsequent rejection of Fig 1 which shows the invention of the rigid entity with two attachable as well as three attachable containers instead of the original simplest or minimal configuration of the invention of the rigid entity with one attachable container. Both show the invention of the rigid entity, the amended version is to add clarity and is shown (reduced to practice) in the provisional patent visually. Applicant argues the art reduced to practice by the provisional patent and the wording of the original claims is proof that the inventor had possession of the claimed invention regarding the two attachable containers configuration.

Regardless of the rejection or possible allowance of the amended figure, the feature of the invention of the rigid entity is disclosed and the claims, including reference to more than one attachable container, should be treated as reduced to practice or duplication of the invention or as originally claimed by the limitation "at least one attachable container" as it would be impossible to show every different configuration of attachable container and hatched container. The examiner has requested a proposed drawing correction or corrected drawings. Applicant believes all features of the invention are shown in both figures but is finding it difficult to claim or show the rigid entity novelty.

Under 35 U.S.C. 112 Specification, the second paragraph states "the specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant's specification concludes with claim 1 "at least one attachable container", claim 2 "a plurality of attachable containers stacked and secured on top of said attachable container", and claim 11 "at least one attachable container, and a means for securing adjoining said wheeled container to said attachable container whereby the combined containers form a single rigid entity". These claims are the conclusion of the original specification and with the attached

drawing of the provisional patent and the original Fig 1 disclose the invention to enable someone skilled in the art to make and use the same. Under 35 U.S.C. 113 are "The applicant shall furnish a drawing where necessary for the understanding of the subject matter" and in this case not even the original Fig. 1 or the provisional patent drawing or the amended Fig 1 drawings are necessary and the amended Fig 1 drawing in any way adds new matter that was not part of the original disclosure.

Applicant has sent with this petition a drawing of wheeled container with two attachable containers, one attachable container secured to the top of the first attachable container. This drawing is page 6 of 14 of the provisional patent filed on 06/08/2000 application no. 60/209,964 as pursuant to 35 U.S.C. 119(e)(i) priority claimed in the Patent Application Transmittal Letter, and is identical in concept and structure to the amended fig. 1, showing one wheeled container and two attachable containers. The applicant proposes the amendment to the references of the front page. This drawing of the provisional patent should positively confirm that the art is not new matter to this application and that a wheeled container with two attachable containers stacked on top of the wheeled container is the art reduced to practice as of 06/08/2000. The original fig. 1 illustrated the forming of the rigid entity (also mentioned in claim 11) for rolling in the tilted position showing the simplest configuration of the invention. The forming of the rigid entity is the matter or scope of the claim language in claim 1 and is considered the object of the invention. Claim 11 states " at least one attachable container, and a means for securing adjoining said wheeled container to said attachable container whereby the combined containers form a single rigid entity". Claim 2 adds duplication of the said attachable container and means for securing, and should be considered duplication of existing matter and procedure of claim 1, but not new matter. Claim 2 is primarily relied upon to narrow the attached location of the attachable containers to being on top of the first said attachable container, as well as their structural configuration relative to each other as being stacked (or piled).

Even if claim 2 were considered canceled, the phrase "at least one" in reference to the attachable container of claim 1, clearly claims one as well as two attachable containers, as the amended fig 1 illustrates, or three or a plurality of attachable containers. Claim 1 then can by itself support the claim language of claim 2 when claim 1 includes more than one attachable container to be attached. Applicant relies on claim 1 language to support the Fig 1 amendment and two attachable containers.

1. A modular wheeled container system that is tilted from the free standing position for rolling comprising:
 - a) a wheeled container having a means for rolling
 - b) at least one attachable container, and
 - c) a means for securing adjoining said wheeled container to said attachable container.

2. The system of claim 1 further including a plurality of attachable containers stacked and secured on top of said attachable container.

The claim 3 issue of hitching is not shown in this Fig 12 and the details of the hitching should not have any bearing on the allowance. This figure would then make it clear for someone skilled in the art to make and use the invention and clarify that the inventor had

possession of the claimed invention. The skilled person would see the original Fig 1 with one attachable container and the Fig 12 of a wheeled container with 3 attachable containers clearly stated in the original claim 2 as a plurality of said attachable containers. The first said attachable container is shown in the original fig 1 and the plurality of said attachable containers are stacked and secured on top of said attachable container, simply as duplication of the attachable container already show on the wheeled container. A person skilled in the art reading only the above description of the specification and the original fig 1 should easily be able to use and reproduce the invention having three or more (plurality) attachable containers, if they had broadly interpreted at least one as only one and two or more for the plurality of attachable container as shown in fig 12. Some one skilled in the art would know that by removing one of the three attachable containers, that the inventor must have possessed the claimed invention of two attachable containers as well. Some one skilled in the art broadly interpreting the phrase "at least one" to mean one or only one, would then conclude that "at least one" also included 2 attachable containers, and that the inventor at the time the application was filed knew that two attachable containers was part of the invention and was not later discovered when one of the three attachable container was removed, that a new feature of the invention having only that the claimed invention or a rigid entity for comfortable tilting and rolling was still present. The same person skilled in the art would not be able to patent the configuration with 2 attachable containers.

It is understandable that an inventor cannot keep improving his invention during the patent process without a new date for the improvement being recorded as well as for the practical reasons of examination in terms of additional burden, new issues and new searches. The addition of two or three attachable containers adds no new issues or burdens, and was actually discussed extensively in the Evans art. Applicant believes that there is no new matter or patent rule or that the general intent or spirit of the patent law is broken by the amended Fig 1.

The references on the front page to the prior art patents showing three vertically stacked recycle bins, should allow some skilled in the art to conclude that a plurality of stacked recycle bins or attachable containers must be part of the invention and would be most likely be surprised that the inventor would not have possession of this feature of the invention at the time of filing.

Would someone, skilled in the art, after being shown the original Fig 1 and then told at least one attachable container, as well as being on top of the attachable container as well as a plurality of attachable containers in claim 2, not be able to make or use the invention? Under 35 U.S.C. 112 applicant has shown by the attached provisional patent drawing and the claim of "at least one attachable container" that at the time the application was filed, had possession of the claimed invention of two attachable containers. How do these two items not prove this?

Under 35 U.S.C. 112 Specification, the second paragraph states "the specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant's specification concludes with claim 1 "at least one attachable container", claim 2 "a plurality of attachable containers stacked and secured on top of said attachable container", and claim 11 "at least one attachable container, and a means for securing adjoining said wheeled

container to said attachable container whereby the combined containers form a single rigid entity". These claims are the conclusion of the specification and with the attached drawing of the provisional patent and the original Fig 1 disclose the invention to enable someone skilled in the art to make and use the same. Under U.S.C. 113 are "The applicant shall furnish a drawing where necessary for the understanding of the subject matter" and in this case not even original Fig. 1 or the provisional patent drawing or the amended Fig 1 drawings are necessary and the amended Fig 1 drawing does not in any way add new matter that was not part of the original disclosure. The examiner has not identified the new matter that would add benefit to this invention that applicant has not already disclosed. The applicant has also demonstrated that the drawings are not even necessary.

For the above reasons the applicant request reconsideration for the claim objections.

CONCLUSION

The provisional patent drawing and the claim of "at least one attachable container" proves that the applicant at the time the application was filed, had possession of the claimed invention of two attachable containers on top of a wheeled container. In addition the Board of Appeals concluded there was no new matter added stating: "This portion of the disclosure as originally filed would reasonably convey to the artisan that the appellant had possession at that time of a system embodying a wheeled container and first and second attachable containers as now recited in claim 1." Applicant has amended claim 1 and 24 to remove the 55 inch base perimeter limitation.

For all of the above reasons, the applicant submits that the proposed drawing corrections are not adding new matter but clarity with regards to the scope of the invention as well as overcoming the claim objections. Therefore, for all of the above reasons, applicant submits that the specification and claims are now in proper form, that the claims all define patentably over the prior art, and that this application is now in condition for allowance and which action is respectfully solicited.

CONDITIONAL REQUEST FOR CONSTRUCTIVE ASSISTANCE

Applicant has amended the specification and claims of this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason this application is not believed to be in full condition for allowance , applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. 2173.02 and 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very respectfully,

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The following definition of terms were added in the first amendment.

rigid entity- is the term given to the new, single, container that is formed by securing at least one (first) attachable container on top of a wheeled container. It is also the term given to the new single container that is formed when a second attachable container is secured on the first attachable container which is already secured to the wheeled container. This also pertains to a third attachable container on top of the second, fourth on top of the third, etc. The word **single** is an adjective to further clarify the description of the new entity formed from the multiplicity of containers as a single container that functions in terms of tilting and rolling as a single container. It commonly precedes the two words "rigid entity".

means for securing- is the physical element that mechanically fastens between or across the interface of either a wheeled container and first attachable container, or first attachable container and second attachable container, or second attachable container and third attachable container, etc. The Ferbrache handles (4) are the preferred embodiment and several standard types of hardware or joint design are shown in the alternative embodiments in Figures 4-8.

secure- is the action of engaging the means of securing

hitch -noun- is the physical element that fastens two tilted for rolling, wheeled, containers together. (One or both of the containers may be either a taller one piece container such as a refuse container, or a rigid entity. These hitched containers each have their own wheels which rest separately on the floor, thus forming the "cars of a train"). Fig 4 is the referred embodiment of a hitch which are used with the Ferbrache handles. Other examples of a hitch may be a flexible strap.

hitch- verb - also hitching, hitched- this is the action of fastening two tilted for rolling, wheeled containers together where one or both of the containers may be either a taller one piece container such as a refuse container, or a rigid entity.

adjoining -adjective- refers to the containers directly in contact with one another, such as the wheeled container and the first attachable container. The wheeled container and second attachable container do not touch each other and hence are not considered adjoining.

"Adjoining" and "adjoin" do not refer to hitches or hitching, are not used as a verb, and are not part of the hitch or hitching operation.

ergonomically comfortable tilting and rolling - refers to a minimal height that the rigid entity must reach to allow an adult to tilt and then roll the rigid entity with their back or spine in the straightened position.

tilted for rolling - means that the wheeled container or rigid entity is tilted so that the center of gravity is shifted and held in position above the axis of the means for rolling in order to vertically balance the container in a coplanar direction perpendicular to the axis of rotation. This is typically in excess of a 10 degree angle (for symmetrical evenly loaded containers) between the vertical axis of the container in its free standing position and it's tilted position

The luggage container designs were also discussed as possible prior art but there are no designs that utilize the applicant's claimed structure of using the attachable container to

lengthen the shorter wheeled container to make tilting for rolling ergonomically comfortable. All luggage designs offer a extending handle that the elongates from the wheeled luggage container and an attachable container that is secured to this handle, not to their adjoining container. (There are also no luggage systems that have hitched, tilted for rolling, containers).

Applicant included the following to the Operation under **DEFINITION OF TERMS** to clarify the claims since the use of RUBBERMAID 32 gallon refuse container is not permitted in the claims.

RUBBERMAID refuse container- 'RUBBERMAID' refuse container refers to the 32 wheeled refuse container that is tilted for rolling having the Ferbrache handles for lifting and lid fastening as show in Fig 8, 9, 10 and identification/ description in the specification and claims will be defined by the term 'RUBBERMAID refuse container' and since many of the claims refer to this specific container and handles, it is imperative to use this term. The term 'RUBBERMAID refuse container' in this patent in the disclosure and claims will include all of the following limitations and descriptions as described in the US 4,691,840 FERBRACHE patent:

A refuse container comprising:

a receptacle body having vertical side walls and a central cavity extending downwardly there between;

a lid having a downturned peripheral rim receivable over a top end of said receptacle body, said lid having peripherally located detent means;

at least one lid locking handle having an inward end pivotally coupled to said receptacle body side walls and an outward free end; said handle having camming handle locking projection means and lid locking projection means for respective engagement against said receptacle body side walls and said lid detent means as said handle free end is pivoted toward said receptacle body.

2. A refuse container according to claim 1, wherein a portion of said handle free end extends above a top surface of said lid.

3. A refuse container according to claim 1, wherein said handle locking projection means comprising at least one eccentric camming lobe disposed to rotate over said receptacle body side walls into a fixed, locked position.

4. A refuse container according to claim 3, wherein said receptacle body is formed of elastomeric plastics material deformable inwardly under influence of said camming lobe.

5. A refuse container according to claim 4, wherein said camming lobe residing in a vertically extending recess formed within said receptacle body.
6. A refuse container according to claim 5, wherein said lid locking projection means comprising a tooth extension projecting parallel and spaced apart from said camming lobe.
7. A refuse container according to claim 6, wherein said lid detent means being located in said lid peripheral rim.
8. A refuse container according to claim 7, wherein said lid detent means comprising a continuous groove in said lid peripheral rim adapted to receive said handle tooth extension therein.
9. A refuse container according to claim 8, wherein said lid and said receptacle body being of circular horizontal cross section whereby said lid is situatable upon said receptacle body throughout a 360 degree range of orientation.
10. A refuse container according to claim 1, wherein said lid locking handle having a generally U-shaped profile, comprising parallel arm segments extending from a central bight portion, with remote ends of said arm segments being pivotally coupled to said receptacle body.
11. A refuse container according to claim 10, wherein said handle locking projection means comprising at least one eccentric camming lobe disposed at a distal end of said handle and adapted to rotate over said receptacle body into a fixed locked position.
12. A refuse container according to claim 11, wherein said receptacle body being composed of resilient elastomeric plastics material deformable inwardly under influence of said camming lobe whereby said receptacle body exerting a residual outwardly directed frictional lock against said camming lobe in said fixed locked position.
13. A refuse container comprising:
a receptacle body having vertical side walls and a central cavity extending downwardly therebetween;
a lid having a downturned peripheral lid receivable over said top end of said receptacle body and said lid having peripherally located detent means;
at least one generally U-shaped handle comprising two parallel arm segments extending from a central bight portion, with distal ends of said handle arm segments pivotally coupled to said receptacle body, whereby said bight portion swinging toward said receptacle body into a locking position and away from said receptacle body into a release position; at least one said handle arm segment having spaced apart handle locking means

and lid locking projection means to respectively engage said receptacle side walls and said lid detent means as said handle bight portion is pivoted toward said receptacle body.

14. A refuse container according to claim 13, wherein said handle bight portion extending above the top surface of said lid in said locking position.

15. A refuse container according to claim 14, wherein said lid and said receptacle body being of substantially circular in horizontal cross section.

16. A refuse container according to claim 15, wherein said lid detent means comprising a continuous groove formed in said lid peripheral rim.

17. A refuse container according to claim 16, wherein said lid locking projection means comprising a tooth projection profiled for receipt into said lid rim groove.

18. A refuse container according to claim 13, wherein said handle locking means comprising an eccentric camming lobe disposed to rotate over said receptacle as said handle bight portion is rotated into said locking position.

19. A refuse container according to claim 18, wherein said receptacle body being composed of resilient plastic materials deformable inwardly as said camming lobe rotates thereover, whereby said receptacle body exerting outwardly directed resilient forces against said camming lobe in said locked position.

20. A refuse container, according to claim 19, wherein said camming lobe residing in a vertical track recess formed in said receptacle body.

Claims: I claim:

(*currently amended*) 1. A modular wheeled container system that is tilted from the free standing position for rolling consisting of open top containers that can nest within each other comprising:

- a) a wheeled container having a means for rolling, a top interface, a means for securing across the said top interface
- b) a first attachable container which rests on top of said wheeled container, having a bottom and top interface and a means for securing across it's top interface_
- c) an optional second attachable container having a bottom interface which rests on top of first said attachable container, to be added if the combined height of the said wheeled container and said first attachable container do not reach the height necessary for ergonomically comfortable tilting and rolling.,
- d) a means for securing and lifting with two hands.

wherein said means for securing of said wheeled container secures between or across the adjoining interfaces of said top interface of said wheeled container to said bottom interface of said first attachable container wherein a two container single rigid entity is formed from the secured said wheeled container and said first attachable container wherein the said first attachable container becomes the vertical structural extension to allow ergonomically comfortable tilting and rolling of the said two container single rigid entity, and wherein a cart, frame, or vertically extending handle is no longer required, and wherein the tilting shifts the center of gravity of the load vertically above the axis of the said means for rolling and wherein the angle of tilt is greater than 10 degrees between the free standing position and tilted position, and whereby the vertical stability is increased without increasing either the effective lifting weight or adding horizontal protrusion to a wheeled

container to widen the base to increase the vertical stability, and wherein the sum of the volumetric capacity of the said first attachable container and the said wheeled container is greater than 25 gallons ~~and wherein a base perimeter of the wheeled container is greater than 55 inches~~ and wherein the total volume of the said two container rigid entity is greater than 32 gallons, and wherein the said wheeled container can nest within the said first attachable container,

and if said second attachable container is needed to reach the height necessary for ergonomically comfortable tilting and rolling, wherein said means for securing of the first attachable container secures between or across the adjoining interfaces of said top interface of said first attachable container to said bottom interface of said second attachable container and wherein a three container single rigid entity is formed from the secured said wheeled container secured to said first attachable container, and said second attachable container secured to said first attachable container wherein said first attachable container and second attachable container become the vertical structural extension to allow ergonomically comfortable tilting and rolling of the said three container single rigid entity, and wherein a cart, frame, or vertically extending handle is no longer required, and wherein the tilting shifts the center of gravity of the load vertically above the axis of the said means for rolling and wherein the angle of tilt is greater than 10 degrees between the free standing position and tilted position, and whereby the vertical stability is increased without increasing the effective lifting weight or adding horizontal protrusion to a wheeled container to widen the base to increase the vertical stability, and wherein the sum of the volumetric capacity of the said first attachable container and the said wheeled container is greater than 25 gallons, ~~and wherein the base perimeter of the wheeled container is greater~~

than 55 inches and wherein the total volume of the said two container rigid entity is greater than 32 gallons, and wherein the said wheeled container can nest within the said first attachable container and said first attachable container can nest within the said second attachable container.

2. *(canceled)*

3. *(Previously amended)* The system of claim 1 further including a means for hitching said two container single rigid entity or said three container single rigid entity to a second said two container single rigid entity or second said three container single rigid entity, for rolling in the tilted position wherein the said means for hitching fastens the said two container single rigid entity or said three container single rigid entity to a second said two container single rigid entity or second said three container single rigid entity, and wherein the tilting shifts the center of gravity of the load vertically above the axis of the said means for rolling and wherein the angle of tilt between the vertical axis of the said two container single rigid entity or said three container single rigid entity to a second said two container single rigid entity or second said three container single rigid entity is greater than 10 degrees between it's free standing position and tilted position and whereby the said two container single rigid entity or said three container single rigid entity fastened to a second said two container single rigid entity or second said three container single rigid entity is vertically stabilized in the tilted position and whereby castored wheels are no longer required.

4. (*Previously amended*) The system of claim 3 wherein said two container single rigid entity or said three container single rigid entity and / or second said two container single rigid entity or said three container single rigid entity is a refuse container.
5. (*Previously amended*) The system of claim 4 wherein first said attachable container is a recycle container on top of said refuse container.
6. (*Previously amended*) The system of claim 5 wherein said means for securing said wheeled container or said refuse container to first said attachable container or first said attachable container to second said attachable container is a handle, telescope fit, groove, over center clasp, or latch.
7. (*Not entered*)
8. (*canceled*)
9. (*Previously amended*) The system of Claim 3 wherein the said means for hitching remains fastened when moved from the tilted position to the free standing position.
10. (*Previously amended*) The system of claim 3 wherein said rigid entity is a luggage device or general purpose cart.
11. – 16. (*canceled*)
17. (*not entered*)
- 18.-20 (*canceled*)

22

21. (*Not entered*)

22. (*previously amended*) The system of claim 4 wherein there is a plurality of hitched said two container single rigid entity or said three container single rigid entity or plurality of said refuse container or combination thercof.

23. (*canceled*)

24. (*currently amended*) The system of claim 6 wherein said refuse container includes; a receptacle body having vertical side walls and a central cavity extending downwardly there between;
a lid having a downturned peripheral rim receivable over a top end of said receptacle body, said lid having peripherally located detent means;
at least two lid locking handle having an inward end pivotally coupled to said receptacle body side walls and an outward free end; said handle having camming handle locking projection means and lid locking projection means for respective engagement against said receptacle body side walls and said lid detent means as said handle free end is pivoted toward said receptacle body,
and wherein a portion of said handle free end extends above a top surface of said lid, and wherein said handle locking projection means comprising at least one eccentric camming lobe disposed to rotate over said receptacle body side walls into a fixed, locked position,
and wherein said receptacle body is formed of elastomeric plastics material deformable inwardly under influence of said camming lobe,

and wherein said camming lobe residing in a vertically extending recess formed within said receptacle body,

and wherein said lid locking projection means comprising a tooth extension projecting parallel and spaced apart from said camming lobe,

and wherein said lid detent means being located in said lid peripheral rim,

and wherein said lid detent means comprising a continuous groove in said lid peripheral rim adapted to receive said handle tooth extension therein,

and wherein said lid and said receptacle body being of circular horizontal cross section whereby said lid is situatable upon said receptacle body throughout a 360 degree range of orientation,

and wherein said lid locking handle having a generally U-shaped profile, comprising parallel arm segments extending from a central bight portion, with remote ends of said arm segments being pivotally coupled to said receptacle body,

and wherein said handle locking projection means comprising at least one eccentric camming lobe disposed at a distal end of said handle and adapted to rotate over said receptacle body into a fixed locked position,

and wherein said receptacle body being composed of resilient elastomeric plastics material deformable inwardly under influence of said camming lobe whereby said receptacle body exerting a residual outwardly directed frictional lock against said camming lobe in said fixed locked position,

improvements comprising:

said attachable container is a recycle container to be secured on top of said refuse container instead of said lid wherein

said recycle container which rests on the said refuse container including:

said recycle container having a downturned peripheral rim receivable over a top end of said receptacle body, said recycle container having peripherally located detent means; at least two said lid locking handle, to be used to lock said recycle container instead of said lid, having an inward end pivotally coupled to said receptacle body side walls and an outward free end; said handle having camming handle locking projection means and recycle container locking projection means for respective engagement against said receptacle body side walls and said recycle container detent means as said handle free end is pivoted toward said receptacle body,

and wherein a portion of said handle free end extends above said recycle container detent means,

and wherein said handle locking projection means comprising at least one eccentric camming lobe disposed to rotate over said receptacle body side walls into a fixed, locked position,

improvements further comprising wherein said handle is said means for securing said recycle container to said refuse container whereby the volume of the container is increased without increasing the effective lifting weight and whereby the vertical extension of the said recycle container creates a second gripping position of significant distance above the said handle to allow a two handed vertical stabilizing force while rolling.

improvements further comprising wherein said handle is said means for securing said first attachable container to said wheeled container, and second said attachable container to first said attachable container, and third said attachable container to second said attachable container,

improvements further comprising wherein the said refuse container or said wheeled container has a base perimeter greater than 55 inches and vertical height reduced for an equivalent 32 gallon volume wherein the vertical stability is increased and wherein the first said attachable container, and second said attachable container if needed, becomes the vertical structural extension to allow ergonomically comfortable tilting and rolling and wherein a cart, frame or vertically extending handle is no longer required,

improvements further comprising wherein said handle of first said rigid entity and said handle of second said rigid entity and further said hitch are connected together to form said means for hitching whereby hitched said rigid entities or said refuse containers or combination thereof can be tilted for rolling, and remain hitched when tilted from free standing position and tilted for rolling position.

25. (*previously added*) The said attachable container of claim 24 further including two or more said handle and said attachable container having a receptacle body having vertical side walls and a central cavity extending downwardly there between; said attachable container having an outward peripheral rim receivable with top end of said receptacle body, said attachable container having peripherally located detent means;

at least two attachable container locking handle having an inward end pivotally coupled to said receptacle body side walls and an outward free end; said handle having camming handle locking projection means and attachable container locking projection means for respective engagement against said receptacle body side walls and said attachable container detent means as said handle free end is pivoted toward said receptacle body.

26. *(previously added)* The said attachable container of claim 25 further including;
wherein said handle locking projection means comprising at least one eccentric camming lobe disposed to rotate over said receptacle body side walls into a fixed, locked position, and wherein said receptacle body is formed of elastomeric plastics material deformable inwardly under influence of said camming lobe,
and wherein said attachable container locking projection means comprising a tooth extension projecting parallel and spaced apart from said camming lobe,
and wherein said attachable container detent means being located in said attachable container peripheral rim,
and wherein said attachable container detent means comprising a continuous groove in said attachable container peripheral rim adapted to receive said handle tooth extension therein,
and wherein said attachable container locking handle having a generally U-shaped profile, comprising parallel arm segments extending from a central bight portion, with remote ends of said arm segments being pivotally coupled to said receptacle body,

and wherein said handle locking projection means comprising at least one eccentric camming lobe disposed at a distal end of said handle and adapted to rotate over said receptacle body into a fixed locked position,

and wherein said receptacle body being composed of resilient elastomeric plastics material deformable inwardly under influence of said camming lobe whereby said receptacle body exerting a residual outwardly directed frictional lock against said camming lobe in said fixed locked position.

APPENDIX 2 - 1 OF 4 DRAWINGS

110.

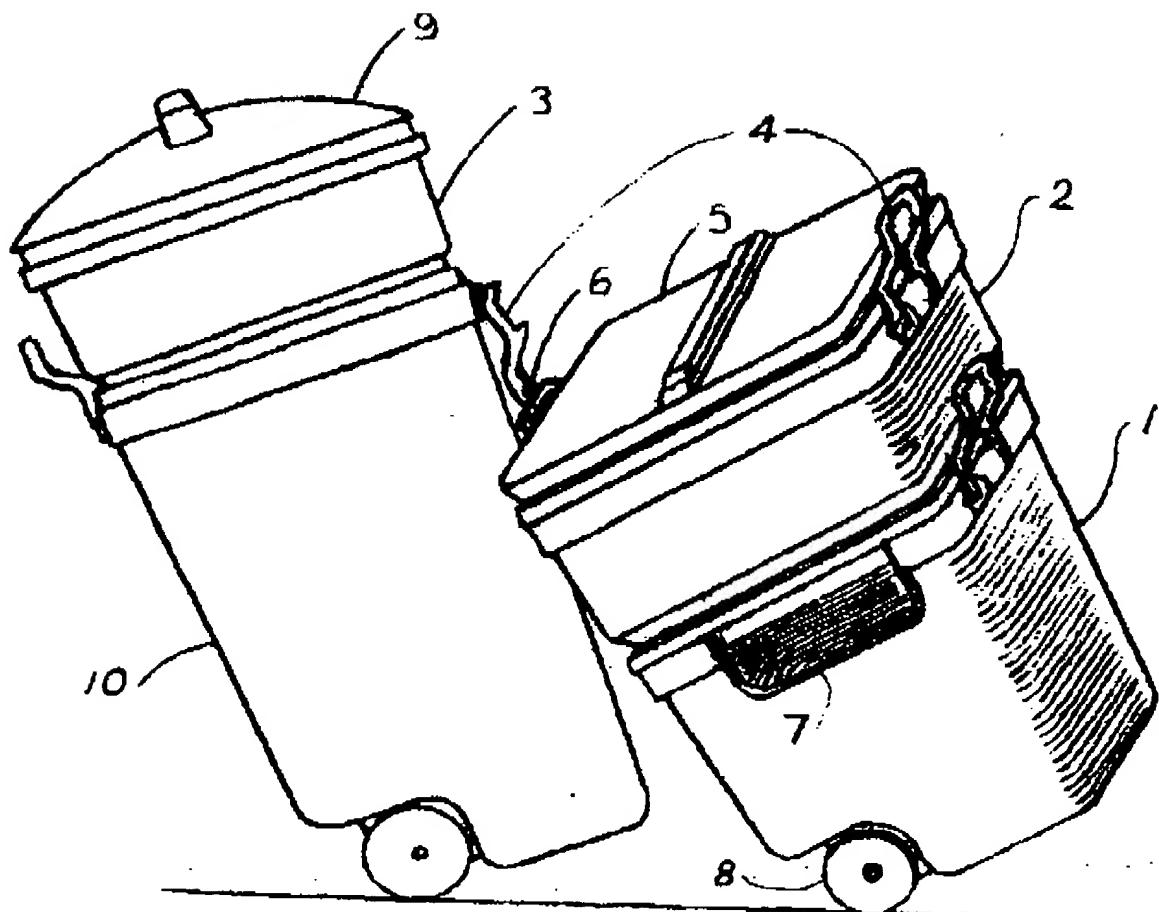


FIG 1 (original)

APPENDIX 2 - 2 OF 4 DRAWINGS

1110

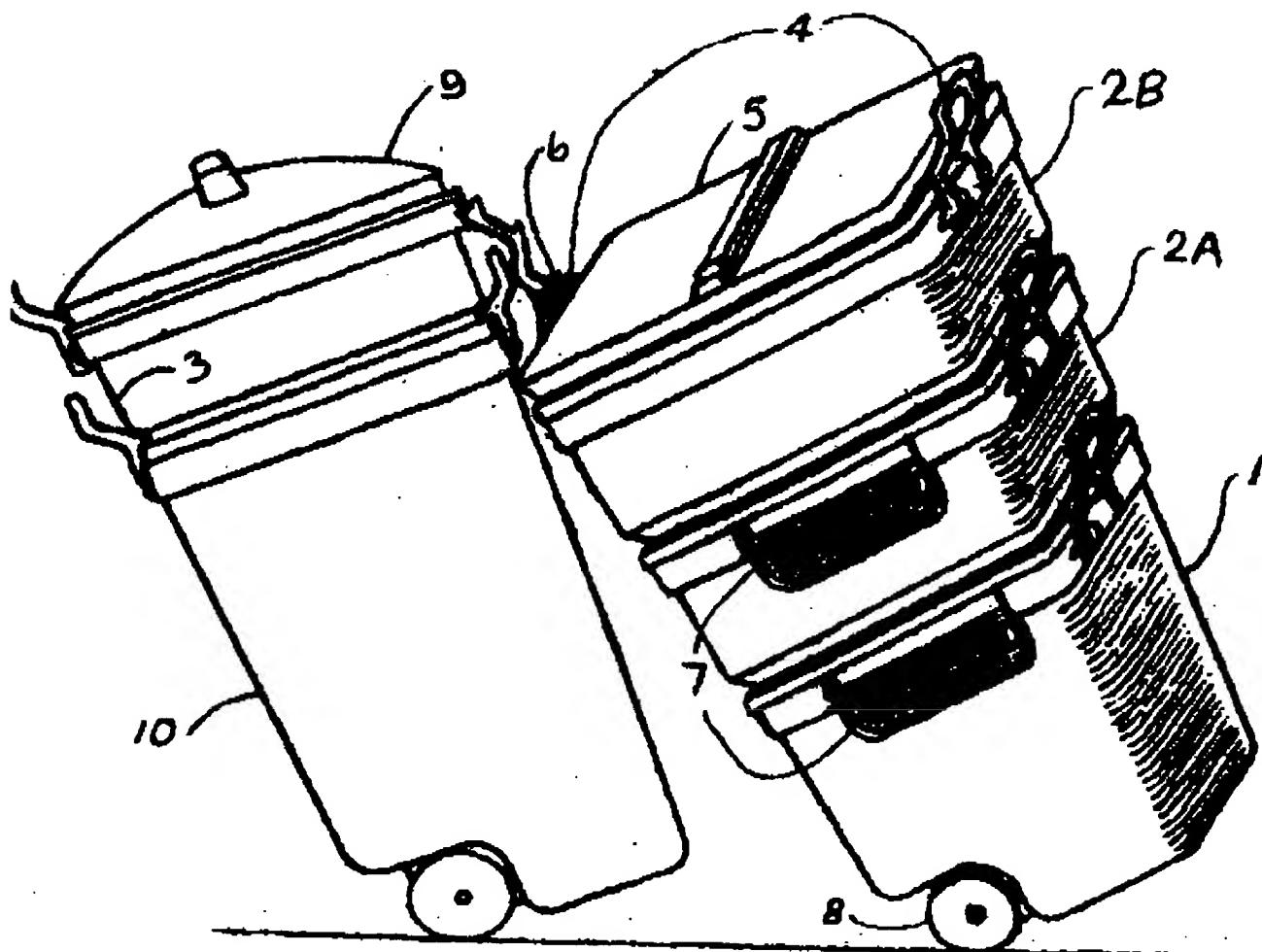


FIG 1 FIRST AMMENDMENT (REJECTED)

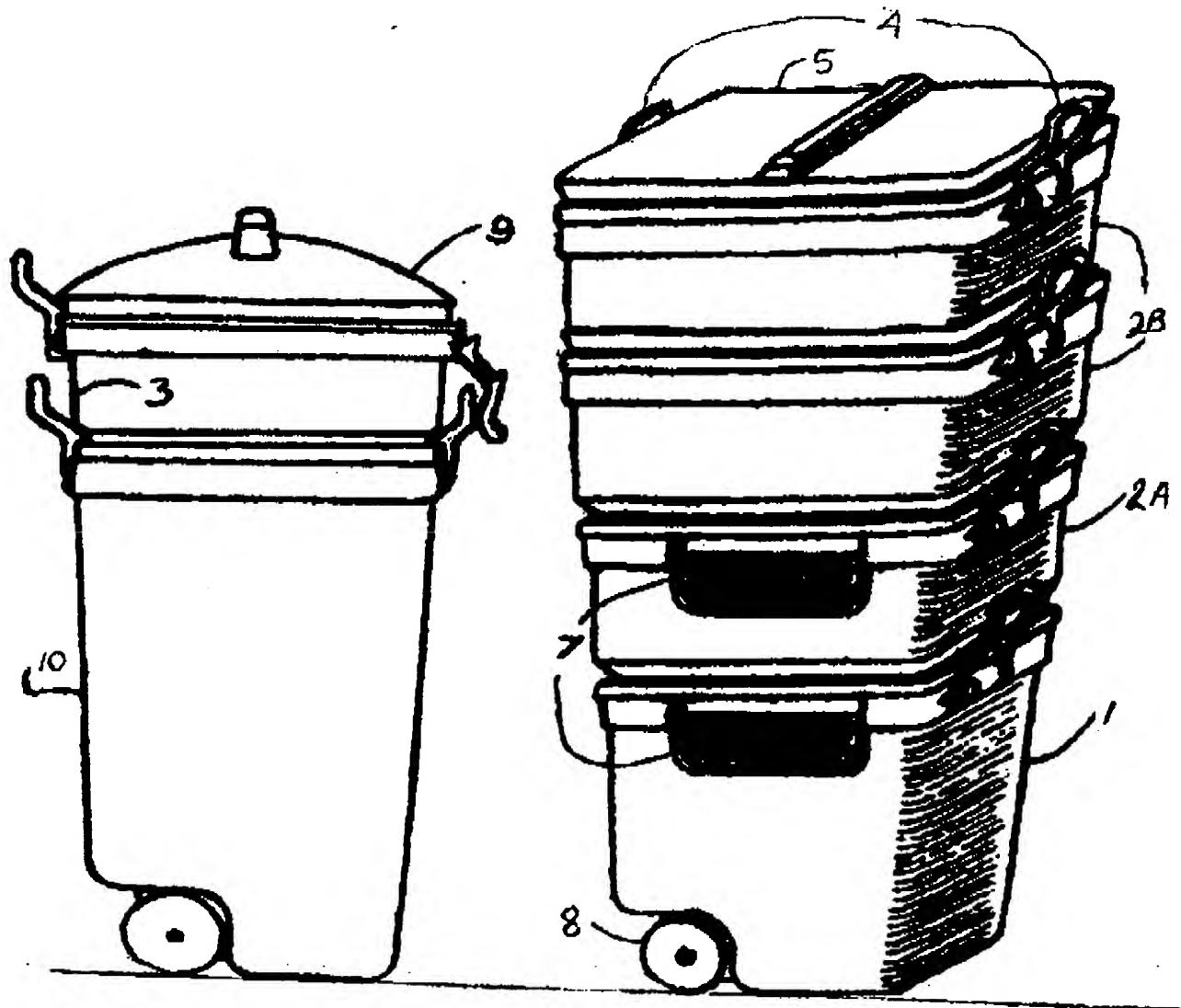
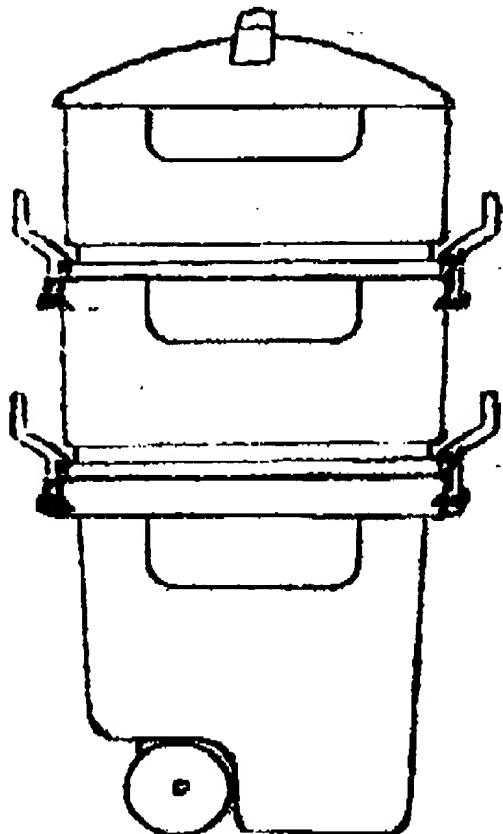


FIG 12
drawing added as amendment (rejected)

APPENDIX 2 - 4 OF 4 DRAWINGS



- RECYCLE CAN
- matches Roughneck
- many variations in size, number of bins, and color coding
- rain and snow protection
- lower bin may be used or exchanged for full size can depending on customer's needs

(provisional patent)

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